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March 7, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Re: CC Docket 87-266 and CC Docket 94-1

Please include the attached written correspondence as part of the public record in the above-captioned proceedings.

Please call me if you have any questions concerning this filing.

Marie Breslin

cc: K. Wallman
K. Levitz
J. Schlichting

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Raymond W. Smith
Chairman of the Board and
Chief Executive Officer

March 7, 1995

The Honorable Reed Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Chairman:

I am writing to elaborate upon the speech I made last week at the NARUC Winter Meeting because I am concerned that you not misconstrue our position.

I believe that the regulatory regime governing telecommunications regulation is in need of a significant overhaul. By imposing arcane, burdensome and costly regulatory requirements, the current system stifles economically efficient investment in the nation's infrastructure, delays the introduction of innovative new services, impedes economic growth, and imposes billions of dollars of costs annually on the American economy and ultimately consumers.

This is not an indictment of the regulators themselves. You and the staff of the FCC are hardworking and dedicated public servants.[1] Rather, it is a problem endemic to any attempt to intrusively regulate an industry characterized by steadily increasing competition and rapid technological change. The solution is straightforward: Adopt a streamlined regulatory scheme for all segments of the communications industry that eventually will lead to an end to all regulations.

Regulatory processes and restrictions have long been a barrier to the introduction of new services. The regulatory process delayed the widespread availability and resulting consumer benefits of cellular service for nearly 20 years.[2] This same process has already imposed multi-year delays in the deployment of competing video entertainment and information distribution systems in the form of redundant regulatory processes. And it is primed to do more harm.

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[1] For example, I understand that Kathleen Wallman, Chief of the Common Carrier Bureau, and other members of her staff canceled holiday vacation plans in order to process video dial tone applications. I recognize and appreciate their efforts. My goal is to allow them to be home for the holidays.

[2] In a 1991 study, National Economic Research Associates estimated that the delay in introducing cellular service cost the U.S. economy $86 billion.

First, if a telephone company wants to build a video dial tone system, it must obtain a construction permit under Section 214 of the Communications Act. This "initial step" in the process has taken Bell Atlantic 16 months to secure approval for a market trial and 20 months to be certified to build a commercial system. Section 214 was never intended to be used in this way. When Congress included Section 214 in the 1934 Communications Act, it was concerned that the mergers of telephone companies with telegraph companies might leave some customers without service and some areas with duplicate facilities. Little did Congress know that 60 years later the country would be clamoring for more facilities for more telephones, fax machines, cellular phones, pagers, and video services.

For decades Section 214 applications were administered swiftly by the Common Carrier Bureau on delegated authority from the Commission. In the last five years, however, this otherwise simple process has evolved into full scale litigation. In addition to describing the areas served, the Commission has ruled that video dial tone providers must provide detailed plans of the network to be deployed, even though new technology may provide a more economical solution by the time the application is processed.

Also, securing a Section 214 permit requires public disclosure of essentially every competitively sensitive aspect of a telephone company's plan to compete against the incumbent, monopoly cable provider.[3] Ironically, providing this type of information to competitors outside of the regulatory process would raise serious concerns under the antitrust laws.

Second, after getting a construction permit, a telephone company must obtain a waiver of the Part 69 rules. Why? -- because the Commission chose to treat video dial tone service as a form of access service instead of recognizing that video dial tone is a new service that is fundamentally different from the traditional telephone services to which Part 69 was designed to apply. Part 69 requires carriers to structure access tariffs in the same way as telephone services were offered at the time of divestiture--a form that does not contemplate the service options that will be available to video programmers and customers. We

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[3] I am also sure that your staff finds this data gathering process frustrating. We have heard that in some cases we have not been as responsive to their requests as they would like. This process has been frustrating for us as well because it requires us to walk a fine line that balances our obligation not to disclose competitively sensitive information with the desire to provide the staff with the detailed information that they need to address the numerous and often frivolous issues raised by our competitors.

thus need a waiver to depart from the required rate structure for access services.

Ordinarily, the Commission's internal practices require a Part 69 waiver before a telco can file a tariff. The Commission has agreed, however, to allow simultaneous filings of tariffs and Part 69 waiver petitions in our Northern Virginia and Dover, NJ system networks. However, when it recently had the opportunity to make this practice permanent, the Commission reaffirmed its existing policy of requiring an approved Part 69 waiver prior to filing video dial tone service tariffs. It has taken the FCC as much as a year or more to process these waiver requests for some services.

After running the construction permit and waiver gauntlets, a telephone company can then proceed to the tariffing stage, where it can spend anywhere from 4 months to 2 years trying to establish firm service prices. We have found the tariffing process to be extremely difficult and inflexible. Again, the difficulty is not with the people but with the rules.

For example, there is no flexibility in the Commission's rules to allow rate structures that would encourage small video programmers to use video dial tone service. We would like to offer a variety of rate options and allow customers to choose the ones that best meet their needs. The Commission's rules, by contrast, apply archaic notions of cost causation that result in a "one size fits all" approach that does not further the goal of providing new programmers with an outlet for their products.

After one clears the 214 permit, the Part 69 waiver, and the tariffing hurdles, it's not over yet! Two additional proceedings are underway that seek to impose more regulatory requirements on the pricing of video transport and the ability of an affiliated programmer to offer service on a video dial tone platform.

In one rulemaking, the Commission is considering whether to establish a separate price cap basket for video dial tone service. Such an incremental approach misses the whole point--video dial tone is a competitive service that should not be subject to rate regulation at all. If this service were offered at the state level it would not be subject to rate regulation, since video dial tone faces competition from the incumbent cable providers, the phenomenally successful direct broadcast satellite providers, the established broadcasters, and the multibillion dollar video sales and rental industry.

To place video dial tone in a price cap basket that would constrain artificially our ability to lower or raise rates to meet

competition makes no sense. Ironically, at the same time the Commission is regulating video dial tone as a fully regulated monopoly telephone service, the presence of video dial tone competition serves as the trigger to relieve the incumbent monopoly cable service provider from all rate regulation.

Of equal concern is the rulemaking proceeding addressing affiliate programmer issues--that is, how much of Bell Atlantic's own network can a Bell Atlantic programmer use. The FCC has previously recommended a 25% limitation and I am aware that some support for that recommendation exists within the current Commission. Others are proposing 50% limits. Either way you look at it, any such requirement means that if Bell Atlantic wants to engage in Constitutionally protected speech, it must build a video dial tone system two to four times larger than market demand may require. When you combine such a capacity limit with tariffing requirements that discourage small programmers from using the system, one can legitimately ask whether all of the programming capacity will ever be used. As a result, if the Commission were to adopt rules that would allow large portions of the video dial tone network to lie fallow, Bell Atlantic could not afford to take the risk of deploying video dial tone service.

Where We Go From Here

Here are the actions that must be taken to make video dial tone an attractive platform for delivering video programming:

1. Remove Section 214 as a roadblock. The Commission should interpret its obligations under Section 214 more narrowly. It could find, for example, that the construction of competing video delivery systems is in the public interest and grant blanket 214s approvals for video dial tone construction within telco service areas. It has made similar findings for the construction of telephone lines.

2. Deregulate video dial tone service as soon as possible. Once video dial tone is available, the monopoly cable companies will not be subject to rate regulation. Telcos should not have their rates set by the Commission either, and should be permitted to file informational tariffs on the same basis as competitive access providers and other competitors.

3. Until rates are deregulated do not impose either procedural barriers (Part 69 waivers) or artificial pricing constraints (price cap baskets).

4. Allow telephone companies to offer rate structures that encourage small programmers to use the video dial tone platform.

You have the opportunity to provide an affordable distribution network to a host of small programmers who cannot command the resources or audiences necessary to negotiate successfully with cable companies.

5. Do not require us to build video dial tone capacity that no one will ever use. Even though James Earl Jones is our most effective spokesperson, this is not a case where, given the Commission's rules, it is clear that "if we build it they will come."

6. In order to eliminate any concern with cross-subsidy, the Commission should adopt pure price cap plan that does not contain sharing. Breaking the link between prices and actual costs makes it impossible to shift the costs of video dial tone onto other regulated services. Even the National Cable Television Association is now on record at the Commission as supporting pure price caps.

I and my staff would welcome the opportunity to discuss these matters with you and your staff in more detail. I believe we share the same vision of creating new opportunities for customer choice, control, and convenience in the information age. Let's take the fullest advantage of this opportunity.

Sincerely,

Raymond W. Smith
Bell Atlantic

cc: Commissioner Barrett
Commissioner Chong
Commissioner Ness
Commissioner Quello